THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION NO.18594 OF 2005

DATED; 25th APRIL, 2006.

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Between:

Jagadiswara Saw Mill, Kuntibadra village,

Kothur Mandal, Srikakulam District, rep. by

Its owner T. Jagadiswara Rao … Petitioner

And

1. The Divisional Forest Officer, Srikakulam,

   Srikakulam District and another. …. Respondents

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THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION No.18594 OF 2005

ORDER :

This writ petition is filed seeking a declaration that the order of the 1st respondent – Divisional Forest Officer, Srikakulam dated 13-5-2005, made under Rule 9 (2) of The A.P. Saw Mills (Regulation) Rules, 1969 (for short, 'the Saw Mills Regulation Rules') thereby confiscating the saw mill machinery and forest produce involved in the alleged offence and also forfeiting the security deposit under Rule 9 (3) of the Saw Mills Regulation Rules as confirmed on appeal by the 2nd respondent by order dated 12.7.2005 as arbitrary and illegal.

The facts, in brief, are as under:

The petitioner-saw mill is holding a licence in Form-II granted under Rule 4(2) of the Saw Mills Regulation Rules for establishing and running a saw mill and depot at Kuntibadra village of Srikakulam District which is valid up to 31-12-2006. On 17-4-2005, the Forest Range Officers of Pathapatnam at Kottur along with other staff having visited the petitioner saw mill, seized 54.1216 cmt of timber found therein under a panchanama on the allegation that the timber found in the saw mill was exceeding 50 cmt of timber permitted under the licence granted in favour of the petitioner. Apart from the timber, the machinery of saw mill was also seized under the same panchanama. Thereafter, a show cause notice dated 17-4-2005 was issued by the 1st respondent calling upon the petitioner to show-cause as to why the saw mill machinery should not be confiscated under Rule 9 (2) (a) of the Saw Mills

Regulation Rules and the licence in its favour should not be revoked. In the said show cause notice, apart from the allegation that the petitioner exceeded the storage limit of 50 cmt, permitted under the licence, it was also alleged that the petitioner failed to inform the nearest Forest Officer about possessing the timber without property marks and the timber not claimed by the others as required under Rule 7 (5) (a) & (b) of the Saw Mills Regulation Rules. The further allegation made was that the petitioner failed to produce the certified proof and documents related to the excess storage of timber (Mango-wood) and the permissions to saw teak as well as storage if teak were not made available in the site.

The petitioner submitted a detailed representation dated 29-4-2005 denying all the above allegations and also enclosed all the necessary documents, permits and registers in support of his version. However, the 1st respondent by order dated 13-5-2005 concluded that whereas, the petitioner was permitted to store exempted species, non-teak and other species up to 50 cmt only, the petitioner had stored 54.1216 cmt in the saw mill premises thus exceeding the limits specified in the licence. It was also held that though the petitioner did not possess permission to saw teak, the teak logs were found in the saw mill premises, which were not brought forward to the present year's stock. It was also found that the exempted species like Mango, Neredu, Nallathumma found in the saw mill were not certified by the concerned Mandal Revenue Officer to show that they were not brought from the scheduled area. Thus, it was concluded that the ***petitioner was operating the saw mill in violation of Rule 7 (5) (a) & (b)*** of the Saw Mills Regulation Rules and accordingly the whole machinery along with the seized forest produce were confiscated under Rule 9 (2) (a) and also forfeiting the security deposit under Rule 9 (3) of the Saw Mills Regulation Rules. Aggrieved by the same, the petitioner preferred an appeal under Rule 11 of the Saw Mills Regulation Rules, however, the same was dismissed by the 2nd respondent – Conservator of Forests, Visakhapatnam by order dated 12-7-2005, which is under challenge in this writ petition.

I have heard the learned Counsel for the petitioner and the learned Government Pleader for Forests appearing for the respondents in detail; and

perused the material on record.

In exercise of the powers conferred under Section 29 read with Section 68 of the A.P. Forest Act, 1967, the Governor of Andhra Pradesh made the A.P. Saw Mills (Regulation) Rules, 1969 vide G.O.Ms.No.457, dated 12-3-1969. As per Rule 3 of the said Rules, no person shall install, erect or operate a saw mill for cutting, converting or sawing of timber without obtaining a licence for such installation from the licensing authority. Under sub-rule (2) of Rule 3, there is a prohibition of grant of licence for setting up saw mills within a distance of 5 Kms from the boundary of any forest under the control of Forest Department. It is not in dispute that the petitioner is holding such a licence, which is valid up to 31-12-2006.

It is also not in dispute that as per the licence granted in Form-II of the Saw Mills Regulation Rules in favour of the petitioner, the petitioner is permitted to store/trade to a maximum quantity of 50 cmt of forest produce.

Under Rule 7 of the Saw Mills Regulation Rules, the licensee is also required to maintain registers as given in Form –III (A) & (B) of the Rules fully and properly accounting the timber received in the saw mill for conversion and its disposal. However, the said Rule itself makes it clear that the said requirement does not apply to the exempted species under A.P. Forest Produce Transit Rules, 1970 (for shot, 'the Transit Rules"). That apart, sub-rule (5) of Rule 7 of Saw Mills Regulation Rules provides that the timber for sawing and conversion shall not be accepted unless it bears property marks and it is covered by a transit permit. Sub-rules (1) & (5) of Rule 7 of Saw Mills Regulation Rules may be extracted hereunder:

> "7. (1) Registers as given in Form-III(A) and (B) of these rules shall be maintained by every licence holder for accounting fully and properly the timber received ***excluding the exempted species under transit rules*** in the saw mill for conversion, and its disposal. The registers should be made available at any time to all inspecting officers along with permits/invoices in original, within the saw mill premises.
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> (2) … … … .. … …
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> (3) … … … … … …
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> (4) … … … …. .. …
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> (5) Timber for sawing and conversion shall not be accepted unless:
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> a. it bears property marks; and

b. it is covered by a transit permit, and for this purpose all timber lying within and adjacent to saw mill premises up to a distance of five meters shall be taken into consideration:

Provided that the licence holder shall immediately report to the nearest Forest Officer, the timber without property marks, and the timber not claimed by others.

(6) … … … … … …"

For proper appreciation of the above requirements prescribed under Rule 7 of the Saw Mills Regulation Rules, it is necessary to refer to some of the relevant Rules under A.P. Forest Produce Transit Rules, 1970, which were also made in exercise of the powers conferred by Section 29 read with Section 68 (1) of the A.P. Forest Act, 1967. Rule 3 of the Transit Rules runs as under:

"3. No forest produce shall be moved into or from or within the State by land or water, unless such produce is accompanied by a permit therefor issued under Rule 5 and produced for check immediately on demand:

Provided that where the forest produce is imported into the State from any other State it is enough if such produce is accompanied by a permit issued by the Government of the State from where such produce is imported and the said permit shall be valid only for the transport of such produce and such quantity to the destination specified therein."

Rule 6, which deals with property marks runs as under:

"6. (1) The ownership of timber not belonging to the Government may, if moved within the State in accordance with these rules be indicated by a separate property mark;

2. All such property marks shall be registered by the Divisional Forest Officer;

3. … … .. … .. …

4. … … … … … …

(5) … … … …. … …"

It is necessary to note that under Rule 16 it was made clear that the Transit Rules are not applicable to such classes of timber and other forest produce in such areas as are specified in Schedules-II & III of the Rules. Rule 16 of the Transit Rules may be extracted hereunder.

"These rules shall not apply to red-sanders and sandal wood and such classes of timber firewood and other forest produce and in such areas as are specified in Schedule II and III."

It is relevant to note that in exercise of the powers conferred under Section 29 read with Section 68 of the A.P. Forest Act, 1967, the Governor of Andhra Pradesh has also made A.P. Forest Produce (Storage and Depots) Rules, 1989 (hereinafter referred to as, 'the storage and Depot Rules') to regulate the setting up of forest produce (storage and depots) in the State.

Rule 2 (vii) of the Storage and Depot Rules defines '***forest produce***' for the purposes of the said Rules as all types of timber, fuel wood excepting those species that are exempted under A.P. Forest Produce Transit Rules, 1970. Under sub-rule (2) of Rule 3 of the Storage and Depot Rules, it was also made clear that if the saw mill and forest produce depot are in the name of same person and in the same premises they will be treated as one unit and a common licence granted under A.P. Saw Mills (Regulation) Rules, 1969 shall be deemed to be licence granted under the Storage and Depot Rules.

On a combined reading of the above referred provisions under the Transit Rules and the Storage & Depot Rules, it is clear that so far as such classes of forest produce and in such areas as are specified in Schedules –II & III of the Transit Rules, it is not necessary either to obtain the transit permit under Rule 3 of the Transit Rules and Depot Licence for the purpose of storage as required under the Storage and Depot Rules.

Now, coming to the allegations on the basis of which the impugned confiscation was ordered, the timber found in the petitioner saw mill premises at the time of the inspection on 17-4-2005 as recorded in the panchanama of seizure may be extracted hereunder:

Volume (cmt)

1. Nidra Ganneru logs 6 nos 13.2709
2. Mamidi logs 6 nos 4.2444
3. Neredi logs 8 nos 0.4440
4. Nalla Tumma logs 68 nos 5.4771

5. Nidra Ganneru sawn sizes 1947 nos 16.7557

6. Teak logs (permits obtained) 173 nos 13.9295

Total 54.1216 cmt

It is not in dispute that items 1 to 5 timber mentioned above are exempted classes of timber as provided under Rule 16 of the Transit Rules read with Schedule-II. Under clause (xv) and clause (xi) of column-4 of schedule-II, Nidraganneru and Neredu respectively are exempted classes of timber in all the revenue districts in the State. Similarly, under clause (xviii) of column-4 of Schedule-II Mango is an exempted class of timber in all the revenue districts except in scheduled areas. Similarly, Nallathumma is also an exempted class of timber under clause (xvii) of Schedule-II in all revenue districts except Ananthapur district.

The petitioner saw mill being located in Kuntibadra village of Srikakulam District which is not a scheduled area, undoubtedly items 1 to 5 species of timber are exempted classes of timber for which neither transit permits nor depot licence for storage are required. Consequently, the allegation of contravention of Rule 7 (5) (b) of the Saw Mills Regulation Rules that the timber lying in the saw mill shall be covered by a transit permit is unfounded and without any basis.

The other allegation of contravention of Rule 7 (5) (a) of the Saw Mills Regulation Rules with regard to property marks on the timber as required under Rule 6 of the Transit Rules, the impugned order of the appellate authority – 2nd respondent, dated 12-7-2005, itself shows that the case record submitted by the Divisional Forest Officer, Srikakulam revealed that the Mandal Revenue Officer, Bhamini issued Certificate of Title under proceedings dated 26-11-2004 and 12-7-2004 as required under law, which also shows that the patta land from which the said timber was brought was not situated in scheduled area. Hence, the allegation of contravention of Rule 7 (5) (a) was not made out so far as the above said five classes of exempted species of timber are concerned.

Then, the only question that remains for consideration is whether the allegations so far as the item No.6 of panchanama i.e., 173 teak logs (which is not an exempted class of timber) found in the premises of the petitioner saw mill is concerned, the alleged irregularities are made out warranting confiscation.

The show-cause notice dated 17-4-2005 shows that the only allegation was that the petitioner did not obtain the permission to saw and store teak timber.

The petitioner in his explanation dated 29-4-2005 had explained that the teak logs were received in the saw mill brought from Orissa State covered by T.T. Permit issued by A.C.F. Parlakhemundi vide Divisional Forest Officer, Parlakhemundi Memo No. 6054, dated 2-12-2004. It was also stated that immediately after receipt of teak timber in saw mill through permit Nos.48/2005 and 49/2005 dated 5-12-2004 the same was intimated to the Forest Range Officer, Pathapatnam on 13-12-2004 and acknowledgement was obtained. The Forest Section Officer, Kottur inspected the saw mill and checked the teak logs available in the saw mill premises on 15-12-2004 and signed on the permits.

The 1st respondent though referred to the said explanation, curiously did not consider the same and jumped at his own conclusion that the petitioner was operating the saw mill in violation of Rule 7 (5) (a) & (b) of the Saw Mills Regulation Rules without assigning any reasons in support of the said conclusion. The 2nd respondent – appellate authority though observed that the exempted species of timber were covered by the Certificate of Title issued by Mandal Revenue Officer, Bhamini which also shows that the patta land was not situated in scheduled area and also noted the fact that the teak logs were brought from Orissa and were covered by forest permit issued by the Orissa State and that the said fact was informed to the Forest Range Officer, Pathapatnam on 13-12-2004 itself, confirmed the order of confiscation merely on the basis of remarks called from the Divisional Forest Officer, Srikakulam, against whose order of confiscation, the appeal was preferred. Admittedly, the petitioner did not take up sawing of teak longs. Since the fact that the said teak logs were brought from Orissa covered by valid permits is not in dispute and that apart the concerned Forest Range Officer was also informed

about the possession of the teak logs in the petitioner saw mill, the petitioner cannot be said to have committed any forest offence.

It is also relevant to note that in the show-cause notice the petitioner was only called upon to show-cause as to why the machinery of the saw mill should not be confiscated **or** the licence granted should not be revoked. However, strangely, the 1st respondent confiscated not only the machinery of the saw mill but also the entire forest produce seized and also forfeited the security deposit. Since the petitioner was never put on notice about the proposed penal action, as rightly contended by the learned Counsel for the petitioner, the procedure adopted by the respondents 1 and 2 was in utter violation of the fundamental principles of natural justice and also not in conformity with the statutory provisions.

It is also the specific case of the petitioner that at the time of the inspection on 17-4-2005 the petitioner has produced all the relevant registers and certificates, however the seizure was affected under the panchanama only on the allegation that the timber stored in the premises was more than 50 cmt permitted under the licence. The petitioner in his explanation categorically stated that since species 1 to 5 mentioned in the panchanama are exempted classes, they cannot be taken into consideration and the only non-exempted timber being teak logs was 13.9295 cmt was well within the maximum storage capacity of 50 cmt.

It is relevant to note that Rule 2 (vii) of the Storage and Depot Rules defines ‘forest produce’ as all types of timber except those species that are exempted under the A.P. Forest Produce Transit Rules. Hence, as rightly contended by the petitioner, the items 1 to 5 exempted species cannot be taken into consideration. Since admittedly teak logs found were only 13.9295 cmt, it cannot be said that the petitioner exceeded the maximum limit of 50 cmt.

It is also relevant to note that Rule 7 (1) of the Saw Mills Regulation Rules which requires that registers shall be maintained accounting the timber received in the saw mill also makes it clear that the exempted species under Transit Rules are excluded from the requirement of maintenance of such registers.

Hence, viewed from any angle, none of the allegations made in the show-cause notice was established. The impugned orders of confiscation passed by the

respondents 1 and 2 without application of mind to any of the relevant factors, being arbitrary and illegal, are hereby set aside.

The Writ Petition is accordingly allowed. No costs.

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G. ROHINI, J.

Dt. 25–4-2006

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